Remarks

Claims 1, 2, 4-6, 8-12, 14-19 and 21-23 are pending.

Claims 3, 7, 13 and 20 were canceled, without prejudice.

Claims 1, 2, 4, 5, 8-12, 14, 19, 22 and 23 were amended.

Claims 1, 6 and 11 were amended to particularly point out and distinctly claim Applicants' invention. Claim 1 was amended to recite associating a vendor with the target system; employing the vendor identifier, which identifies the vendor; storing a program associated with the hardware identifier at the host system; and failing to find the received vendor identifier at the host system and responsively downloading the program associated with the received hardware identifier over the communication channel from the host system to the target system. See, for example, original Claim 7. Claim 11 was similarly amended.

Claim 6 was rewritten in independent form to include limitations of Claim 1.

Claims 1, 2, 4, 5, 8-12, 14, 19 and 23 were amended to correct one or more informalities.

Claim 22 was amended to depend from Claim 21.

Information Disclosure Statement

The Examiner states that a copy of a publication listed in the information disclosure statement is not provided.

It appears that the Examiner refers to Cite No. BB (ORANGE PERSONAL COMMUNICATIONS SERVICES LTD., "Orange.com - SPV update", http://www.orange.com/English/forwardthinking/spvupdate.asp?bhcp=1, October 17, 2003, 1 p.) (Orange) from Sheet 2 of 2 of the Information Disclosure Statement, as filed with the Application on February 25, 2004, since that citation was not initialed by the Examiner.

It is submitted that Orange was, in fact, provided with the paper copy of the Application, as filed. In support of this position, a true and correct copy of the return post card is attached hereto as Exhibit 1. This clearly indicates that the Information Disclosure Statement (IDS) was filed with three references ("w/3 references"). Form PTO/SB/05 (Utility Patent Application Transmittal), of record, also refers to "Copies of IDS Citations". Applicants' attorney's practice is (and has always been) to very closely review all application papers before they are filed in the Office. It is submitted that Orange (a true and correct copy is attached hereto as Exhibit 2) was submitted to the Office with the paper copy of the Application, as filed, that the Office lost or misplaced that page after receipt, or that the Office's agent lost, misplaced or combined that page with another citation when the Office's electronic copy was scanned.

In view of the above, it is requested, therefore, that the Examiner consider the one-page reference <u>Orange</u> (Exhibit 2) on the ground that it was timely filed with the Application on February 25, 2004.

Alternatively, if the above is not persuasive, then it is requested that the Examiner consider the reference under 37 CFR 1.97(c)(2). In that event, please charge the requisite fee to Deposit Account No. 02-2556.

Claim Objections

The Examiner objects to Claims 1, 2, 4-12, 14-19 and 21-23 on the ground of informalities.

As to the use of "said programs", the Examiner takes the position that all uses should be "said plurality of programs". While the claims have generally been amended[1] to make this change, certain recitations in the claims do not require this change in order to provide proper antecedent basis. For example, Claim 1 recites "storing a plurality of programs at the host system; storing a plurality of identifiers at the host system, with each of at least one of said identifiers being associated with at least one of said programs". Here, for example, there is no need to amend this recital, since the use of "said programs" clearly has antecedent basis to "storing … programs". Similarly, Claim 1 recites "to select one of said at least one of said programs". Again, for example, there is no need to amend this recital, since the use of "said at least one of said programs" clearly has antecedent basis to "at least one of said programs".

As to the use of "said identifiers", the Examiner takes the position that all uses should be "said plurality of identifiers". While the claims have generally been amended to make this change, certain recitations in the claims do not require this change in order to provide proper antecedent basis. For example, Claim 1 recites "storing a plurality of identifiers at the host system, with each of at least one of said identifiers being associated with at least one of said programs". Here, for example, there is no need to amend this recital, since the use of "said identifiers" clearly has antecedent basis to "storing … identifiers".

As to the use of a colon (:) after "further comprising", this has been amended in accordance with the Examiner's suggestion.

As to the use of "said application programs", the Examiner takes the position that all uses should be "said plurality of application programs". It is respectfully submitted that the claims do not require this change to provide proper antecedent basis. For example,

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[1] For example, Claim 2 was amended to recite "said plurality of programs" because Claim 1 also makes reference to "at least one of said programs".

Claim 2 recites "responsively selecting one of said application programs; and downloading said selected one of said application programs ". Here, for example, there is no need to amend this recital, since the use of "said application programs" clearly has antecedent basis to "application programs" in the claim.

As to the use of "said vendor identifiers" or "the vendor identifiers", the Examiner takes the position that all uses should be "said plurality of vendor identifiers" or "the plurality of vendor identifiers", respectively. Here, for example, there is no need to amend these recitals, since the use of "said vendor identifiers" or "the vendor identifiers", clearly has antecedent basis to "vendor identifiers" in the claim.

Claim 11 was amended to recite "communication channel" in accordance with the Examiner's suggestion.

With the above amendments and remarks, it is submitted that the claim objections have been dealt with.

Provisional Obviousness-Type Double Patenting Rejection

It is noted that this rejection and the corresponding rejection in co-pending Application No. 10/988,304 are both provisional. It is also noted that the present Application No. 10/786,823 was filed before co-pending Application No. 10/988,304.

If an appropriate "provisional" nonstatutory double patenting rejection is made in each of two or more pending applications, then the examiner should follow the practice set forth in MPEP § 804, subsection I.B.1. in determining in which of the applications an appropriate terminal disclaimer must be filed. See MPEP § 804.02, II.

If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, then the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. MPEP § 804, I.B.1.

Based upon the present Amendment, it is believed that the provisional rejection is the only rejection remaining in this earlier filed of the two pending applications. Since the other later-filed application is rejectable on other grounds (i.e., a response has not yet been filed as of the filing date of this Amendment), it is requested that the Examiner withdraw the provisional rejection from this Application and permit this earlier-filed application to issue as a patent without a terminal disclaimer.

If the ODP rejection is the only rejection remaining in the later-filed application, while the earlier-filed application is rejectable on other grounds, then a terminal

disclaimer must be required in the later-filed application before the rejection can be withdrawn. MPEP § 804, I.B.1.

REJECTIONS UNDER 35 U.S.C. § 112, ¶2

The Examiner rejects Claims 1, 2, 4-12, 14-19 and 21-23 on the ground of being indefinite.

As to Claims 1 and 11, the Examiner objects to the term "some" on the ground of being a relative term.

It is submitted that the term "some" as employed in the Application means "being at least one". See, for example, Exhibit 3, which is a true and correct copy of a definition from Merriam-Webster's Online Dictionary at http://www.m-w.com/dictionary/some ("being at least one —used to indicate that a logical proposition is asserted only of a subclass or certain members of the class denoted by the term which it modifies"). This is an ordinary and accustomed definition of the term "some", which does not contradict any definition found in or ascertained by a reading of the patent documents. [J]udges are free to consult dictionaries and technical treatises at any time in order to better understand the underlying technology and may also rely on dictionary definitions when construing claim terms, so long as the dictionary definition does contradict any definition found in or ascertained by a reading of the patent documents.
Phillips v. AWH Corp., 415 F.3d 1303, 1314, 1322-23, 75 U.S.P.Q.2d 1321, 1326-27, 1334 (Fed. Cir. 2005).

Although Applicants' attorney disagrees with the Examiner's position, in order to advance the Application to allowance at an early opportunity, Claim 1 has been amended to recite storing a plurality of identifiers at the host system, with each of at least "one" of the identifiers being associated with at least one of the programs. See, for example, page 18, lines 20-21 of the specification, where vendor id="0x6D" is associated with one program version="3.6.1.24", and page 18, lines 25-29 of the specification, where vendor id="0x6F" is associated with either program version="3.6.0.38" or program version="3.6.0.73".

Hence, in view of the above, it is submitted that Claim 1 passes muster under Section 112, second paragraph.

Claim 11 has been amended in the same manner as Claim 1 and passes muster under Section 112, second paragraph, for the same reasons.

Claims 2, 4, 5, 8-10 and 23 depend from Claim 1 and pass muster under Section 112, second paragraph, for the same reasons.

Claims 12, 14-19, 21 and 22 depend either directly or indirectly from Claim 11 and pass muster under Section 112, second paragraph, for the same reasons.

Claim 19 was amended to recite that the host system is selected from the group "consisting of" a workstation, and a personal computer. Hence, it is submitted that this claim, as amended, properly recites a Markush group, and passes muster under Section 112, second paragraph.

Claim 22 was amended to depend from Claim 21, in order to provide proper antecedent basis for the recitals of "said second wireless communication port" and "said wireless communication vendor". Therefore, Claim 22 passes muster under Section 112, second paragraph.

REJECTIONS UNDER 35 U.S.C. § 102(e)

The Examiner rejects Claims 1, 2, 4, 5, 7, 8, 11, 12, 14-19 and 21-23 on the ground of being anticipated by U.S. Patent No. 6,701,521 (McLlroy et al.).

Claim 1, as amended, recites, *inter alia*, failing to find the received vendor identifier at the host system and responsively downloading the program associated with the received hardware identifier over the communication channel from the host system to the target system.

For this recital from original Claim 7, the Examiner relies (Office Action, page 17) upon column 18, lines 1-5 and 10-13 of McLlroy et al. which provides (at column 17, line 65 through column 18, line 13):

> In step 1120, application description 1030 and the hardware and software attributes of portable computer system 1020 are communicated to application source 915 by software manager 950. That is, a specification 1040 comprising application description 1030 and the hardware and software information is used by software manager 950 to locate application source 915, or to locate application 1050 within application source 915. Application 1050 may be stored locally or on the WWW. Accordingly, application source 915 may be located on WWW server 910, it may be located at a different Web site accessible via the Internet 905, or it may reside on computer system 342, such as data storage device 704 (FIG. 7). For example, applications may be downloaded and stored in memory of computer system 342, and then subsequently accessed by a portable computer system.

It is respectfully submitted that McLlroy et al. does not teach or suggest the refined recital of *failing to find* a received *vendor* identifier at a host system *and*

responsively downloading a program *associated with* a received *hardware* identifier over a communication channel from a host system to a target system.

It is respectfully submitted that use of "hardware and software information" by a software manager 950 to locate application source 915, or to locate application 1050 within application source 915 does not teach or suggest this recital. Furthermore, the Supreme Court, in *KSR International Co. v. Teleflex Inc.*, ___ U.S. ___, ___, 2007 WL 1237837 at *14 (2007) (emphasis added), stated the following with respect to the determination of obviousness under 35 U.S.C. § 103:

> Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. See *In re Kahn*, 441 F.3d 977, 988 (Fed Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinnings to support the legal conclusion of obviousness").

Accordingly, it is respectfully submitted that the Examiner has not met the requisite burden of proof.

Therefore, for the above reasons, Claim 1 patentably distinguishes over the single-cited reference.

Claims 2, 4, 5, 8 and 23 depend from Claim 1 and patentably distinguish over the single-cited reference for at least the same reasons.

Claim 11 is an independent claim, which, as amended, recites, *inter alia*, that a loader routine is further adapted, after failing to find a received vendor identifier at a host system, to responsively download a program associated with a received hardware identifier over a communication channel from a host system to a target system.

It is respectfully submitted that McLlroy et al. does not teach or suggest the refined recital of a loader routine being adapted, after *failing to find* a received *vendor* identifier at a host system to *responsively download* a program *associated with* a received *hardware* identifier over a communication channel from a host system to a target system.

It is respectfully submitted that use of "hardware and software information" by a software manager 950 to locate application source 915, or to locate application 1050 within application source 915 does not teach or suggest this recital.

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Therefore, for the above reasons, Claim 11 patentably distinguishes over the single-cited reference.

Claims 12, 14-19, 21 and 22 depend directly or indirectly from Claim 11 and patentably distinguish over the references for at least the same reasons.

REJECTIONS UNDER 35 U.S.C. § 103(a)

The Examiner rejects Claims 6, 9 and 10 on the ground of being unpatentable over McLlroy et al. in view of U.S. Patent No. 6,496,979 (Chen et al.).

Claim 6 is an independent claim, which recites, *inter alia*, failing to find a file at a host system and responsively downloading a program associated with a received hardware identifier over a communication channel from a host system to a target system.

It is submitted that Chen et al. adds nothing to McLlroy et al. regarding this refined recital. Here, the Examiner relies upon McLlroy et al. (column 18, lines 10-13), which provides "applications may be downloaded and stored in memory of computer system 342, and then subsequently accessed by a portable computer system." It is respectfully submitted that this does not teach or suggest the refined recital of *failing to find a file* at a host system *and responsively downloading a program* associated with a received hardware identifier over a communication channel from a host system to a target system. It is also respectfully submitted that the Examiner's conclusion is a mere conclusory statement and does not provide the requisite articulated reasoning and rational underpinnings to support a legal conclusion of obviousness.

Accordingly, it is respectfully submitted that the Examiner has not met the requisite burden of proof.

Hence, Claim 6 patentably distinguishes over the references.

It is submitted that Chen et al., which discloses no vendor identifier within the context of Claim 1, adds nothing to McLlroy et al. regarding the refined recital of failing to find a received vendor identifier at a host system and responsively downloading a program associated with a received hardware identifier over a communication channel from a host system to a target system, to render Claim 1 unpatentable.

Claims 9 and 10 depend from Claim 1 and patentably distinguish over the references for at least the same reasons.

Furthermore, Claim 9 recites associating a version number with each of the plurality of programs; storing the plurality of identifiers in a file at the host system; associating one of the plurality of identifiers in the file at the host system with one of the plurality of programs having the version number for the one of the plurality of programs; and

updating the file to associate such one of the plurality of identifiers with a new program, which is different than the plurality of programs, and which has a new version number, which is different than the version number.

It is submitted that Chen et al. adds nothing to McLlroy et al. regarding this refined recital. Here, the Examiner relies upon McLlroy et al. (column 14, lines 41-53) which provides that:

> software manager 950 can automatically identify when a different version (e.g., a more recent version) of an application, relative to the version described by the application shell, is available from application source 915. Similarly, when the application is comprised of multiple components, files or objects, software manager 950 can automatically identify when a later version of a component, file or object is available. In one embodiment, software manager 950 can automatically install the latest version of the application, component, file or object. In an alternative embodiment, the user can indicate which version should be installed.

McLlroy et al., which automatically installs the latest version of an application, component, file or object, has nothing to do with *updating* the recited *file* of Claim 9, which stores the recited plurality of identifiers, in order to associate the recited one of the plurality of identifiers with a new program, which is different than the recited plurality of programs, and which has a new version number, which is different than the version number. Therefore, Claim 9 further patentably distinguishes over the references.

Summary and Conclusion

The prior art made of record and not relied upon but considered pertinent to Applicants' disclosure has been reviewed.

In summary, it is submitted that Claims 1, 2, 4-6, 8-12, 14-19 and 21-23 are patentable over the references of record.

Reconsideration and early allowance are requested.

Respectfully submitted,

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